

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GUISEPPE CAVALIERE,

Plaintiff/Counter-Defendant-  
Appellee,

v

VINCENT DILORENZO, ANGELA TINERVIA,  
and TOWER DEVELOPMENT COMPANY,

Defendants/Counter-Plaintiffs-  
Appellants.

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UNPUBLISHED

January 8, 2008

No. 271663

Macomb Circuit Court

LC No. 1999-003189-CB

Before: Saad, P. J., and Owens and Kelly, JJ.

PER CURIAM.

Defendants/counter-plaintiffs (“defendants”) appeal as of right from a judgment awarding plaintiff/counter-defendant (“plaintiff”) \$1.1 million dollars in damages, in accordance with a case evaluation accepted by the parties, plus collection costs, partial post-judgment interest, sanctions (costs and attorney fees), and interest on the sanctions. We affirm in part and reverse in part.

**I. Basic Facts and Proceedings**

Plaintiff, Guiseppe Cavaliere, and defendants, Vincent DiLorenzo and Angela Tinervia, were partners in defendant, Tower Development Company (“the partnership”), which was formed in 1986 for the development of residential properties and subdivisions. Plaintiff filed a complaint against defendants, alleging that DiLorenzo and Tinervia had formed another business and appropriated business opportunities from the partnership. Plaintiff alleged claims for breach of fiduciary duty, an accounting, injunctive relief, and the appointment of a receiver to dissolve the partnership and liquidate property. Defendants filed a counterclaim for breach of contract, fraud, and detrimental reliance. All claims were submitted to case evaluation, and the panel issued an award in plaintiff’s favor for \$1.1 million and no cause of action on defendants’ counterclaim. All parties accepted this award, and plaintiff moved for entry of “partial judgment,” but he argued that he had claims for two additional partnership properties that had been excluded from case evaluation. The trial court entered a partial judgment adopting the case evaluation award but providing that it did not resolve the last pending claim or close the case. Rather, the partial judgment ordered a settlement conference regarding plaintiff’s allegations about the additional property and issues pertaining to his capital account. Defendants moved for

reconsideration, arguing that a final, rather than partial, judgment was appropriate, but the trial court was not persuaded. The trial court later ruled that the claims regarding these two properties had been submitted to case evaluation and the award had disposed of them, but it stated that the case remained open.

Plaintiff moved to wind up and terminate the partnership, distribute his partnership share and other assets, and to amend the partial judgment to add language formally dissolving the partnership. The trial court denied plaintiff's motions, finding that these issues had been submitted to case evaluation and resolved by the case evaluation award. The trial court stated that a final judgment should be awarded to plaintiff and defendants should dissolve and wind up the partnership. This order provided that it resolved the last pending claim and closed the case, and defendants satisfied the judgment. Plaintiff moved for sanctions, collection costs, and pre- and post-judgment interest, alleging that defendants had acted frivolously in objecting to plaintiff's proposed partial judgment, moving for reconsideration of the partial judgment, filing an unauthorized second supplemental response brief, and objecting to plaintiff's collection efforts. The trial court imposed costs and attorney fees as sanctions against defendants for their "frivolous" filings and interest on the costs and fees but refused to allow prejudgment interest. The trial court entered a final judgment dissolving the partnership and for the amount of the case evaluation award. The trial court awarded plaintiff court officer fees, attorney fees, costs, interest on attorney fees and costs, and post-judgment interest.

## II. Entry of a "Partial Judgment" on a Case Evaluation Award

Defendants argue that the trial court erred in entering a partial judgment on the case evaluation award, rather than a final judgment. We agree that the trial court erred by failing to enter a final judgment for the case evaluation award, but disagree with defendants' contention that all orders entered after the case evaluation award must be reversed or vacated. The interpretation and application of a court rule is a question of law that we review de novo. *Knue v Smith*, 478 Mich 88, 92; 731 NW2d 686 (2007).

A judgment that disposes of all claims in the action is a final judgment, whereas a judgment that does not dispose of all claims is not a final judgment. See MCR 2.602(A)(3); see also MCR 2.604(A). MCR 2.403(K)(2) requires that a case evaluation award dispose of all claims, and MCR 2.403(L)(1) and (3) require that the parties accept or reject a case evaluation award in its entirety. Further, MCR 2.403(M)(1) provides:

If all the parties accept the panel's evaluation, *judgment will be entered in accordance with the evaluation*, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. *The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.* [Emphasis added.]

Defendants rely on *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 550, 557; 640 NW2d 256 (2002), in which our Supreme Court held that, having accepted the case evaluation award, the plaintiff could not "subsequently appeal an adverse summary disposition on one count in the action." The Supreme Court stated:

The language of MCR 2.403(M)(1) *could not be more clear that accepting a case evaluation means that all claims in the action, even those summarily disposed, are dismissed.* Thus, allowing bifurcation of the claims within such actions, as plaintiff suggests, would be directly contrary to the language of the rule. We, therefore, reject plaintiff's position because it is contrary to the court rule's unambiguous language that upon the parties' acceptance of a case evaluation all claims in the action be disposed.

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As we have explained, this unambiguous language [of MCR 2.403(M)(1)] evidences our desire to avoid bifurcation of civil actions submitted to case evaluation. . . . *If all parties accept the panel's evaluation, the case is over.*

In the present case, both parties accepted the panel's case evaluation, and defendant sent the required check within twenty-eight days. *In those circumstances, the circuit court should have granted defendant's motion to dismiss, without condition or reservation.* Thus, because the circuit court should have dismissed this case in its entirety, the Court of Appeals did not err when it dismissed the plaintiff's claim of appeal. [*Id.* at 555, 557 (emphasis changed and footnote omitted).]

We agree that *CAM Constr* is dispositive of the issue in this case.

After the parties accepted the case evaluation award, no claims remained before the trial court. Accordingly, the trial court should have granted defendant's motion for entry of judgment, without condition or reservation. Instead, the trial court took under advisement plaintiff's argument that he was entitled to additional compensation and entered only a partial judgment on the case evaluation award. We note that, even after the trial court determined that plaintiff's additional claims were deemed to have been resolved as part of the case evaluation award, the court delayed nearly three years in entering a final judgment, contrary to MCR 2.403(M)(1). We conclude that the trial court erred in entering a partial judgment on the case evaluation award, rather than a final judgment.

However, "an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground . . . for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." MCR 2.613(A). The trial court's failure to immediately enter a final judgment in violation of the court rules did not divest the court of jurisdiction to take further action in this case. Many of the court's subsequent orders involved collection matters and other issues such as interest, costs, and sanctions, which the trial court still had the power to decide even if it had entered a final judgment as requested by defendants. See, e.g., MCR 2.621 and MCR 2.625. There is no authority for the blanket remedy requested by defendants that all orders entered after the date when the parties accepted the case evaluation award must be reversed or vacated, and declining to take such sweeping action is not inconsistent with substantial justice.

### III. Sanctions

Defendants argue that the trial court lacked the authority to impose sanctions after the parties accepted the case evaluation award and contend that the trial court erred in awarding plaintiff sanctions on the basis that defendants filed frivolous pleadings after the case evaluation acceptance. Although defendants argue that the trial court imposed sanctions pursuant to MCR 2.114, a reading of the opinion and order reveals that the trial court relied on MCR 2.625(A) and MCL 600.2591. In any event, we agree that the trial court erred in awarding these sanctions.

A trial court's findings with regard to whether a claim or defense was frivolous, and whether sanctions may be imposed, will not be disturbed unless it is clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002); *State Farm Fire & Cas Ins Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1990). A decision is clearly erroneous when, although there is some evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Kitchen, supra* at 661-662. However, the determination regarding whether the trial court had continuing authority to impose sanctions after the case evaluation acceptance involves the interpretation of the court rules and, accordingly, is reviewed de novo as a question of law. *Knue, supra* at 92.

Defendants claim that the trial court lacked the authority to impose sanctions after the parties accepted the case evaluation award. While we agree, as discussed *supra*, that the trial court erred in entering a partial, rather than final, judgment after the parties accepted the case evaluation award, the partial judgment was entered "in accordance" with the case evaluation award, as contemplated by MCR 2.403(M)(1). Pursuant to MCR 2.403(M)(1), the partial judgment was deemed to dispose of all claims for costs, fees, and interest "to the date it [was] entered," which was July 14, 2003. Accordingly, the trial court retained its authority to order sanctions, including costs and attorney fees as appropriate, for conduct occurring after the date the partial judgment was entered. However, we conclude that the sanctions in this case were not appropriate.

Plaintiff moved for sanctions, including costs and attorney fees, identifying various actions undertaken by defendants, which plaintiff believed were frivolous and deserving of sanctions. The trial court found:

In the present case the Court finds that Defendant's [sic] filings were frivolous and initiated in an effort to delay the ability of the Plaintiff to execute on the Judgment. Therefore, the Plaintiff shall receive costs and attorney fees. Calculations of these payments shall begin from [sic] July 14, 2003, the date upon which this Court entered Partial Judgment . . . .

Although defendants complain about the brevity of the trial court's findings, under MCR 2.517(A)(4), specific findings are unnecessary in decisions on motions, unless required by a particular court rule. MCR 2.625 does not require specific findings. Further, although the trial court's reasoning is brief, it is sufficient to enable appellate review. Remand for additional findings is therefore not required. See *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994).

To determine whether a claim is frivolous under MCL 600.2591, as directed by MCR 2.625(A)(2), we must look at the facts of the case. *Kitchen, supra* at 662. "Not every error in legal analysis constitutes a frivolous position[.]" and although a legal argument may ultimately

be wrong, it does not necessarily follow that it is frivolous. *Id.* at 662-663. Similarly, the mere fact that the opposing party may ultimately prevail on the merits of the argument does not automatically mean that the filing is frivolous. *Id.* The key question is whether the party facing sanctions “presented a sufficient argument grounded in law and fact to avoid a finding of frivolity.” *Id.* at 662. MCL 600.2591(3) defines frivolous as any one of the following:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit. [See also *Kitchen, supra* at 662.]

While the trial court failed to identify the specific conduct meriting sanctions, plaintiff’s motions identified specific incidents, which plaintiff also discusses on appeal. Plaintiff argued that defendants’ objections to the entry of the partial judgment and their motion for reconsideration of the partial judgment, were frivolous. However, defendants were correct in urging the trial court to enter a final judgment rather than a partial judgment after the case evaluation acceptance because the case evaluation award disposed of all claims between the parties. Indeed, in its prior opinion denying plaintiff’s motion to compel distribution of his share of the “Hall Road” property, which was issued while defendants’ motion for reconsideration was pending, the trial court agreed with defendants that the mutually accepted case evaluation award had disposed of all claims between the parties. Thus, by the court’s own reasoning, defendants’ motion for reconsideration was not asserted for an improper purpose, lacking in verification of a factual basis, or devoid of legal merit. See MCL 600.2591(3); *Kitchen, supra* at 662-663.

Plaintiff also argued that defendants’ motion to set aside the ex parte order (for due process violations), and defendants’ other motions objecting to plaintiff’s collection efforts, were frivolous because the trial court had already rejected defendants’ argument that collection should not issue on a partial judgment. The record discloses that the trial court rejected defendants’ argument that a party cannot collect on a partial, non-final judgment. Although we do not disagree with the trial court’s decision on that issue, we note that there is no legal precedent squarely addressing that issue. We conclude that defendant’s position, while ultimately incorrect, was not asserted for an improper purpose, lacking in verification of a factual basis, or so devoid of arguable legal merit that sanctions were warranted. See MCL 600.2591(3); *Kitchen, supra* at 662-663.

Plaintiff contended that defendants filed an unauthorized pleading, i.e., their second supplemental response in opposition to plaintiff’s motions to amend the partial judgment, to compel distribution of his partnership share, and to compel dissolution and windup of the partnership, all of which sought to collect damages in addition to the case evaluation award. Plaintiff is correct that defendants’ pleading was not authorized by the court rules. However, plaintiff does not argue that the filing was lacking in legal merit, lacking in verification of a factual basis, or interposed for an improper purpose. In fact, it was plaintiff’s motions, not defendants’ brief, that were lacking in legal merit. Therefore, this filing was not frivolous. See MCL 600.2591(3); *Kitchen, supra* at 662-663.

Plaintiff claims that sanctions were justified because defendants allegedly convinced the Dearborn Credit Union to dishonor a cashier's check for approximately \$18,880, disbursed by the bank in response to a writ of garnishment. Defense counsel represented to the court that he had nothing to do with the incident. DiLorenzo informed the court that he was told that the bank had changed its mind about negotiating the check, after realizing that the money had come from Tinervia's joint account with her daughter. While this issue could have been the subject of a contempt motion, no such motion was filed, and the trial court never found that the incident was defendants' fault (as opposed to being attributable to the bank's decision). Further, the judgment was paid in full two days after the hearing. Therefore, there was no action on the part of defendants or their counsel that could be deemed frivolous.

For these reasons, we conclude that the trial court clearly erred in finding that defendants' conduct warranted the imposition of sanctions. We therefore reverse the trial court's award of sanctions, located at ¶¶ 8-11 of the final judgment, imposing costs of \$6,084, attorney fees of \$55,226.25, and interest on the award of costs and attorney fees of \$2,312.25.<sup>1</sup>

#### IV. Collecting on A Partial Judgment

Defendants assert that the trial court erred in allowing plaintiff to collect on the partial judgment. We disagree.

MCR 2.604(A) states:

Except as provided in subrule (B), an order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties, and the order is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties. Such an order or other form of decision is not appealable as of right before entry of final judgment. A party may file an application for leave to appeal from such an order. [See also *Children's Hosp of Michigan v Auto Club Ins Ass'n*, 450 Mich 670, 595; 545 NW2d 592 (1996).]

The partial judgment entered by the court on July 14, 2003, took plaintiff's additional claims under advisement, and stated that it did not dispose of all claims between the parties. Therefore, defendants correctly argue that the partial judgment was not a final judgment appealable as of right. See MCR 7.202(6)(a); MCR 7.203(A). Defendants assert that allowing a party to collect on a nonfinal judgment will vitiate the protections provided by the court rules, which stay enforcement of a judgment for 21 days, to allow a party to appeal as of right. However, we

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<sup>1</sup> The trial court's award of partial post-judgment interest of \$12,755.25, and collection costs of \$2,767.74, were based on other grounds and, therefore, may remain. See MCL 600.2559(4) and MCL 600.6013, as modified by MCR 2.403(M).

conclude that the stay protections contained in the court rules apply to both final judgments appealable as of right, and to nonfinal judgments appealable by leave.<sup>2</sup>

MCR 7.101(B)(1)(a) provides that a party may appeal as of right within 21 days after entry of the order or judgment appealed. MCR 7.101(B)(2), which governs the time for taking an appeal by leave, refers to MCR 7.103(B)(1), which requires that appeals by leave also be filed within 21 days (unless otherwise provided by statute). Thus, whether by leave or as of right, an appeal must be filed within 21 days.

Pursuant to MCR 7.101(H)(1), “an execution may not issue and proceedings may not be taken to enforce an order or judgment until the expiration of the time for taking an appeal under subrule (B).” Thus, a judgment, whether final or not, may not be executed within the 21 days available to file an appeal, either as of right or by leave. Similarly, MCR 2.614(A)(1) provides, in relevant part, that “[e]xcept as provided in this rule, execution may not issue on a judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after its entry.” MCR 2.614(A)(1) refers to “a judgment,” not a final judgment, and therefore, it applies to both final and nonfinal judgments. Once the 21-day period has elapsed, a pending appeal does not stay execution of a judgment unless the appellant debtor files a “stay bond” as provided by MCR 7.101(H)(1)(b) and (c). Under MCR 7.101(H)(1)(d), “the filing of a bond stays all further proceedings in the trial court under the order or judgment appealed from[,]” including any execution already in progress. In light of these court rules, we reject defendants’ claim that allowing a party to collect on a nonfinal judgment would vitiate the stay protections that apply only to final judgments.<sup>3</sup>

Affirmed in part and reversed in part.

/s/ Henry William Saad  
/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly

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<sup>2</sup> The trial court in this case waited 21 days after denying defendants’ motion for reconsideration before entertaining plaintiff’s collection efforts.

<sup>3</sup> Defendants rely on Judge White’s separate opinion in *American Paytel Corp v Miller*, unpublished opinion per curiam of the Court of Appeals, issued November 30, 2001 (Docket No. 231594), as support for their argument that allowing the immediate enforcement of an award of sanctions is an abuse of discretion. “An unpublished opinion is not precedentially binding under the rule of stare decisis.” MCR 7.215(c)(1). Moreover, Judge White’s opinion was based on the assumption, “arguendo, that the court rules contemplate the entry of non-final orders or judgments requiring the payment of money as compensation, which are immediately enforceable but not appealable. . . .” *Id.*, slip op at 7. Thus, aside from being a minority opinion in a nonbinding, unpublished case, the opinion does not squarely support defendants’ argument.